

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2
3 IRONDALE COMMUNITY ACTION NEIGHBORS
4 (ICAN) et al.,

5 Petitioners,

6 v.

7
8 JEFFERSON COUNTY,

9 Respondent.
10

CASE NOS. 03-2-0010, 04-02-0022
and 07-2-0012

ORDER ON RECONSIDERATION

11
12 **I. PROCEDURAL BACKGROUND**

13 On October 17, 2008 the Board considered compliance with three items in Jefferson
14 County's Comprehensive Plan which the Board had previously identified to be in need of
15 minor correction and for which Jefferson County (the County) was seeking an Order of
16 Compliance. These items included provisions of Plan Policy 1.6, adoption by reference of
17 the PUD Water System Plan into the Urban Growth Area Element, and incorrect references
18 to the 20 year planning period. The County addressed these items in Ordinance 07-0707-08
19 as described in its compliance report. No objection to a finding of Compliance was filed and
20 on October 22, 2008 the Board found that the County had cured the internal inconsistency
21 found in Policy 1.6; that the County included the necessary inventory, locations and
22 capacities of future water system facilities in its plan; and, that the County's plan now
23 contained appropriate references to the 20 year planning period.¹
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27 On November 3, 2008, Petitioners filed a motion for reconsideration of the Order on
28 Compliance arguing that it contained a factual misstatement. Jefferson County did not file a
29 response to the motion within the five days provided in WAC 242-02-832(1).
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32 ¹ Order on Compliance, 10/22/08.

II. DISCUSSION

A motion for reconsideration, pursuant to WAC 242-02-832(2), shall be based on at least one of the following grounds:

- (a) Errors of procedure or misinterpretation of fact or law, material to the party seeking reconsideration;
- (b) Irregularity in the hearing before the board by which such party was prevented from having a fair hearing; or
- (c) Clerical mistakes in the final decision and order.

In its motion for reconsideration, Petitioners point to a portion of the "Recent Procedural History" which stated:

"The Board found in its February 8, 2008 Compliance Order/Final Decision and Order that Jefferson County complied with the Growth Management Act (GMA) except in three regards."²

Petitioners allege that this is a misstatement because the February 8, 2008 Final Decision and Order (FDO) not only found continued noncompliance related to Conclusions of Law I and K from the May 31, 2005 FDO and Conclusion of Law F from the May 30, 2006 Compliance Order but, Petitioners point out, the May 31, 2005 FDO also found noncompliance in Conclusion of Law H for which the Board did not make a finding of compliance in the February 2008 FDO.³ Thus, Petitioners assert it is a misstatement for the Board to have indicated that the February 8, 2008 FDO found compliance with the GMA except in three regards since there has yet to be a finding of compliance with regard to the May 2005 FDO's Conclusion of Law H. Further, Petitioners argue, the February FDO recognized ongoing noncompliance and invalidity on other major issues.⁴

² Id at. 1-2.

³ ICAN's Motion at 2.

⁴ Id at 3.

1 The Board thought it would be clear to any party participating in these cases that by stating:
2 "The Board found in its February 8, 2008 Compliance Order/Final Decision and Order that
3 Jefferson County complied with the Growth Management Act (GMA) *except in three*
4 *regards.*" (emphasis added), the Board was referring to those matters for which a
5 determination of compliance was being sought in the October 2008 proceeding. The Board
6 and the parties are doubtlessly aware that there are major unresolved issues of
7 noncompliance and invalidity for which the County has been provided a compliance
8 schedule. As to Conclusion of Law H (regarding use of a market factor), from the May 2005
9 FDO, the Board expressly stated in the February 2008 FDO that "A determination of
10 whether the County has applied the correct market factor is premature at this time. This
11 issue may be addressed at the time the County redraws the boundaries of the UGA in
12 accordance with the schedule set out in our April 9, 2007 order."⁵ This is a matter on which
13 the County did not seek a finding of compliance in the October 2008 compliance
14 proceedings, nor did the Board address it. As Petitioners themselves recognize, the Board
15 has established a March 31, 2009 compliance date for adoption of revised UGA boundaries,
16 following which the Board will address the County's use of market factors as necessary.⁶
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20 Nevertheless, to avoid any possibility of confusion, the Board will clarify that the Board's
21 statement of procedural history in the October 22, 2008 Order on Compliance is not to be
22 read so broadly as to suggest that the County has fully complied with earlier orders of the
23 Board.
24

25 III. ORDER

26 Based on the foregoing, the statement in the October 22, 2008 Order on Compliance that
27 reads: "The Board found in its February 8, 2008 Compliance Order/Final Decision and Order
28 that Jefferson County complied with the Growth Management Act (GMA) except in three
29 regards" is replaced to read: "The Board found in its February 8, 2008 Compliance
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32 ⁵ February 8, 2008 FDO at 21.

⁶ Order Finding Continuing Noncompliance and Granting Additional Time for Compliance, April 16, 2008 at 5.
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1 Order/Final Decision and Order that Jefferson County complied with the Growth
2 Management Act (GMA) as set out in Conclusions of Law E, F, G, H, I, and K of that Order.”

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4 Entered this 14th day of November 2008.

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7 _____
James McNamara, Board Member

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Holly Gadbow, Board Member

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William Roehl, Board Member

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16 Pursuant to RCW 36.70A.300 this is a final order of the Board.

17 **Judicial Review.** Any party aggrieved by a final decision of the Board may appeal the
18 decision to superior court as provided by RCW 36.70A.300(5). Proceedings for
19 judicial review may be instituted by filing a petition in superior court according to the
20 procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil
21 Enforcement. The petition for judicial review of this Order shall be filed with the
22 appropriate court and served on the Board, the Office of the Attorney General, and all
23 parties within thirty days after service of the final order, as provided in RCW
24 34.05.542. Service on the Board may be accomplished in person or by mail, but
25 service on the Board means actual receipt of the document at the Board office within
thirty days after service of the final order. A petition for judicial review may not be
served on the Board by fax or by electronic mail.

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27 **Service.** This Order was served on you the day it was deposited in the United States
28 mail. RCW 34.05.010(19).
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